

Exhibit C

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AMERICAN ARBITRATION ASSOCIATION

NEW YORK, NEW YORK - COMMERCIAL RULES

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MOSHAEL J. STRAUS,

Claimant,

v.

Arbitration No.

13 148 Y 01800 10

J. EZRA MERKIN,

Respondent.

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June 22, 2011

Cravath, Swaine & Moore LLP

Worldwide Plaza

825 Eighth Avenue

New York, New York

10:15 a.m.

B E F O R E:

WILLIAM A. DREIER, P.J.A.D. (ret.) - The Chairman

THOMAS J. FLEMING, ESQ. - Panel Member

RORY O. MILLSON, ESQ. - Panel Member

Amy Klein Campion - Hearing Reporter

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<p>1 J. Merkin - Cross/Levander</p> <p>2 they would look like they were</p> <p>3 absolute geniuses.</p> <p>4 MR. BAMBERGER: I'm sure your</p> <p>5 Honor understands --</p> <p>6 THE CHAIRMAN: It's certainly</p> <p>7 not the same as what Mr. Madoff was</p> <p>8 doing, we can all understand that.</p> <p>9 Let's go ahead.</p> <p>10 MR. LEVANDER: Let's look at</p> <p>11 Exhibit 1199.</p> <p>12 Q. This is Millennium. Could you</p> <p>13 see that the percentage of down months</p> <p>14 over a, at least a 20-year period, is</p> <p>15 11.44 percent?</p> <p>16 A. Right. So that I think is a</p> <p>17 point that certainly meant a great deal of</p> <p>18 deference to me, which is in the ballpark</p> <p>19 of approaching 90 percent of positive</p> <p>20 months, there are strategies such as</p> <p>21 Millennium's that run close to 90 percent</p> <p>22 of all months positive.</p> <p>23 What was of interest to me, for</p> <p>24 example, on the prior chart was not</p> <p>25 someone made a lot more money, such as if</p>	<p>1 J. Merkin - Cross/Levander</p> <p>2 sell puts at a very close price in the</p> <p>3 market and that he would sell calls to</p> <p>4 fund the puts.</p> <p>5 I mean, this gentleman here</p> <p>6 could well have taken a view in 2000</p> <p>7 that the market was about to turn and</p> <p>8 go monstrously short.</p> <p>9 Bernie Madoff couldn't do that.</p> <p>10 Once again, you're comparing</p> <p>11 Madoff to gold or something along like</p> <p>12 it -- similar to it.</p> <p>13 We'll put in our expert evidence</p> <p>14 as far as whether Madoff achieved 11</p> <p>15 percent lost months or whether he</p> <p>16 achieved 2 or 3 percent lost months.</p> <p>17 But I know you'll wait to hear</p> <p>18 from my expert before you attach too</p> <p>19 much credence to this, which says it's</p> <p>20 not a single strategy fund, but a</p> <p>21 multi-strategy fund.</p> <p>22 And, again, we should look at it</p> <p>23 in context before we understand</p> <p>24 whether this is proof that Mr. Madoff</p> <p>25 wasn't so extraordinary.</p>
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<p>1 J. Merkin - Cross/Levander</p> <p>2 you look at the percentage of down months</p> <p>3 there are very, very far and few between.</p> <p>4 By analogy to the Chairman's</p> <p>5 observation about gold, you might make a</p> <p>6 great deal of money if you were long gold</p> <p>7 at the right time. If you were long gold</p> <p>8 at the right time and marked it every</p> <p>9 month to market, you would have a very</p> <p>10 significant percentage of down months,</p> <p>11 because gold was basically, like most</p> <p>12 commodities, very volatile.</p> <p>13 This is as much a question of</p> <p>14 volatility as it is absolute performance.</p> <p>15 What I'm suggesting is that</p> <p>16 there were people who had Madoff's</p> <p>17 volatility at his level of performance and</p> <p>18 significantly higher.</p> <p>19 MR. BAMBERGER: I don't object</p> <p>20 given the comments the Panel has made,</p> <p>21 but there's been no evidence</p> <p>22 introduced that Millennium was subject</p> <p>23 to anything like the collar that</p> <p>24 Bernard Madoff was, that he can only</p> <p>25 go long the equity, that he had to</p>	<p>1 J. Merkin - Cross/Levander</p> <p>2 THE CHAIRMAN: Admit this into</p> <p>3 evidence subject to the same comments</p> <p>4 I made before.</p> <p>5 (Respondent's Exhibit 1199</p> <p>6 received in evidence.)</p> <p>7 MR. LEVANDER: Understood.</p> <p>8 A. I just want to observe on this</p> <p>9 Millennium chart, you're talking about a</p> <p>10 15¾ percent compounded return over 20</p> <p>11 years with 11½ percent down months.</p> <p>12 I'm familiar with the fund,</p> <p>13 familiar with the shop, familiar with the</p> <p>14 manager.</p> <p>15 We previously talked about their</p> <p>16 having had some capital in Ascot all the</p> <p>17 through to the end.</p> <p>18 It's all arbitrary -- it's</p> <p>19 overwhelmingly arbitrage strategies. It's</p> <p>20 extremely similar in terms of arbitrage</p> <p>21 concepts to some of the things that we</p> <p>22 used here and elsewhere.</p> <p>23 I just merely point out</p> <p>24 there's --</p> <p>25 MR. BAMBERGER: Real arbitrage.</p>

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<p style="text-align: right;">685</p> <p>1 J. Merkin - Cross/Levander</p> <p>2 A. There's compounding at an</p> <p>3 absolute level and then there's</p> <p>4 volatility.</p> <p>5 MR. LEVANDER: Mr. Bamberger,</p> <p>6 could you wait your turn? The man is</p> <p>7 speaking. It's totally inappropriate.</p> <p>8 MR. BAMBERGER: You're right.</p> <p>9 MR. LEVANDER: One last one</p> <p>10 1200. This is the record of Elliott</p> <p>11 Associates.</p> <p>12 Q. Again, if you go through, it's</p> <p>13 got remarkable consistency performance and</p> <p>14 remarkable performance.</p> <p>15 And if we go --</p> <p>16 A. Elliott Associates is a fund</p> <p>17 that has an over 30-year audited record</p> <p>18 that compounds at right around 14, 15. I</p> <p>19 don't know percentages as what up months</p> <p>20 and down months, but I would wager he had</p> <p>21 lower volatility over those 32 or 33 years</p> <p>22 than Madoff's performance.</p> <p>23 Q. If you would go to the next</p> <p>24 page. What's the last page?</p> <p>25 So it goes from 77 and then we</p>	<p style="text-align: right;">687</p> <p>1 J. Merkin - Cross/Levander</p> <p>2 A. Yes.</p> <p>3 Q. What did he tell you?</p> <p>4 A. Option trading is what I</p> <p>5 discussed with Mr. Madoff many, many times</p> <p>6 over the long period of years, some of</p> <p>7 which I have already testified to. I</p> <p>8 think it's probably -- I shouldn't repeat</p> <p>9 myself.</p> <p>10 We've had discussions of how</p> <p>11 options can be used both to hedge risk and</p> <p>12 create a rate of return.</p> <p>13 Q. I think you've maybe touched</p> <p>14 upon this in response to Mr. Bamberger's</p> <p>15 questions, but over the years did</p> <p>16 Mr. Madoff tell you he was using less or</p> <p>17 more over-the-counter options?</p> <p>18 A. Over the years, the trend was</p> <p>19 away from listed options and toward</p> <p>20 over-the-counter options.</p> <p>21 Q. At some point, according to one</p> <p>22 of your notes, he suggested to you that</p> <p>23 maybe something around 20 percent of the</p> <p>24 options was still being Exchange traded</p> <p>25 and the rest were over-the-counter,</p>
<p style="text-align: right;">686</p> <p>1 J. Merkin - Cross/Levander</p> <p>2 go back to the first page again and go to</p> <p>3 the top.</p> <p>4 In that 30 years the cumulative</p> <p>5 is 80 -- so it's about over 20 percent; is</p> <p>6 that right?</p> <p>7 A. The cumulative return</p> <p>8 annualized?</p> <p>9 Q. Yes.</p> <p>10 A. I think it's still around 15.</p> <p>11 You have to adjust for those compounding</p> <p>12 effects for over 32 or 33 years.</p> <p>13 I would just observe it's also</p> <p>14 on size capital. You're talking about</p> <p>15 assets that are up near 6 billion. This</p> <p>16 is the domestic limited partnership and</p> <p>17 there's a parallel offshore fund.</p> <p>18 But there is no volatility.</p> <p>19 There are no down months of any real</p> <p>20 significance.</p> <p>21 Q. Now, Mr. Bamberger asked you</p> <p>22 some questions about option trading and</p> <p>23 red flags and so on and so forth.</p> <p>24 Did you ever discuss option</p> <p>25 trading with Mr. Madoff?</p>	<p style="text-align: right;">688</p> <p>1 J. Merkin - Cross/Levander</p> <p>2 correct?</p> <p>3 A. Something like that I think is</p> <p>4 correct.</p> <p>5 Q. Did you understand that to mean</p> <p>6 that on any given day when he was trading</p> <p>7 options, 80 percent had to be</p> <p>8 over-the-counter and 20 percent exactly</p> <p>9 had to be Exchange or did you understand</p> <p>10 that to be a rough approximation from</p> <p>11 Mr. Madoff?</p> <p>12 A. No. I think this is</p> <p>13 something -- this was not a snapshot view</p> <p>14 on a static basis. This was the moving</p> <p>15 picture on a dynamic basis over long</p> <p>16 periods of time.</p> <p>17 Q. Did you ever have conversations</p> <p>18 with investors in Madoff, direct or</p> <p>19 indirect investors in Madoff, that you</p> <p>20 thought were options experts?</p> <p>21 A. About? That I would have</p> <p>22 thought were options experts?</p> <p>23 Q. Yes.</p> <p>24 THE COURT REPORTER: I'm</p> <p>25 sorry -- I apologize...</p>

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